

REMARKS

Reconsideration and removal of the grounds for rejection are respectfully requested.

Claims 1-43 were in the application, claims 1-23, 27, 28 and 43 were withdrawn in response to a restriction requirement. Claims 24, 29-32, and 34-42 have been amended.

Claims 29-42 were objected to as being in improper dependant form. These claims have been amended to render moot the objection.

Claims 24-26 and 29-42 were rejected as being indefinite for use of the term “modulating” in claim 24. This has been changed to “reducing” which is amply supported by the specification. This also is believed to render moot the rejection under 35 USC 112, first paragraph, as the examiner admitted that there is enablement for a method of reducing the amount of adipose tissue in an animal.

The rejection of claim 42 as being indefinite has been rendered moot by inserting the term “target” as one embodiment of the invention is directed to producing lean meat for consumption.

Claims 24-26 and 29-42 were rejected as being obvious over Flint in view of Lee.

In order to uphold a finding of obviousness, there must be some teaching, suggestion or incentive for doing what the applicant has done. ACS Hospital Sysys. Inc. v. Montefiori Hospital, 723 F.2d 1572 (Fed. Cir. 1984). Also, "Both the suggestion and the expectation of success must be found in the prior art, not in the applicant's disclosure." In re Dow Chemical Co., 837 F.2d 469 (Fed. Cir. 1988).

The Patent and Trademark Office has the burden under section 103 to establish a prima facie case of obviousness. In re Piasecki 223 USPQ 2d 785 (Fed. Cir. 1984). They can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to an ordinary skill in the art would lead the individual to combine relevant teachings of the references. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988).

The Examiner has acknowledged that Flint does not mention egg laying animals for use in producing anti-adipocyte antibodies and further Flint does not indicate that anti-

adipocyte antibodies can be orally administered.

A skilled person skilled in the art, looking at Flint, would be led away from the use of an egg-laying animal. At column 1 lines 51 to 53, Flint states: "Antigenic adipocyte material is usually derived from the same species and preferably in the same strain, as the animal to be treated with antibodies...". Using the terminology of the present invention, "the same species" and "the animal" refer to the source animals and the target animals. At column 2 lines 8 to 11, it is specifically taught that "It will be appreciated that when antibodies are derived directly from an antiserum, the donor is preferably a relatively large animal.. .". Using the terminology of the present invention, "the donor" refers to the production animals. Clearly, most egg-laying animals and especially egg-laying farm animals in the context of the present application are relatively small, particularly compared to the sheep used in Flint. As such, Flint would lead a person skilled in the art away from even considering the use of egg-laying farm animals, and thus, one skilled in the art would not consider Lee as being practical. In other words, Flint does not motivate a skilled person to consider Lee and to combine the teaching therein with Flint is contrary to what is actually taught in the Flint patent.

Similarly, if a skilled person were to consider Lee, he still would not be motivated arrive at the present invention. Lee is directed to the therapeutic use of antibodies and is not concerned with reducing adipocyte in animals, and Lee is concerned with antibody purification. A skilled person in the art of adipose reduction would not look to a document concerning antibodies purification for solution or ideas. Specifically, Lee does not teach or suggest the use of antigens obtained from a source animal. Instead, Lee suggests the use of bacterial species as antigens, likely for inducing antibodies, for use in antibiotics. See col. 8, l. 16-18. The antibodies produced are for therapeutic purposes, such as infection control, that is, they are pharmaceutical products. See col. 3, l. 38-40. The patent is directed to purification methods, not with how to reduce adipose tissue in a target animal. The claimed invention is directed to a non-therapeutic method, and a non- pharmaceutical product, and concerns a new and novel method for reducing adipose tissue, by ingestion of antibodies obtained from egg laying farm animals, and there is no teaching or suggestion for this

invention.

There is no teaching or suggestion supporting the combination proposed by the examiner, and none would be found by one skilled in the art. Note that Flint issued in 1992, and Lee in 1994, and in the intervening 12 years, despite the near obsession with reducing fat in our diets, no-one of actual skill in the art has been motivated to make the combination which the examiner proposes, and even if made, they have not achieved the method of the present invention. Consequently, claim 24, and the claims depending therefrom are not rendered obvious thereby.

Based on the above amendment and remarks, favorable consideration and allowance of the application are respectfully requested. However should the examiner believe that direct contact with the applicant's attorney would advance the prosecution of the application, the examiner is invited to telephone the undersigned at the number given below.

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